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MS
JS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MACK WARD and WILLIAM E. SIDWELL,
on behalf of themselves and all others similarly
situated,

Case No. 10

4361

JL

Plaintiffs,

v.

FLUOR ENTERPRISES, INC.,

Defendant.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

FLSA COLLECTIVE ACTION
RULE 23 CLASS ACTION (Calif. Claims)

(1) FLSA MINIMUM WAGE &
OVERTIME (29 U.S.C. §§ 207; 216(B),
255(A));
(2) CALIFORNIA OVERTIME (CA
Labor Code §§ 1194, 1197);
(3) RELATED CALIFORNIA LABOR
CODE CLAIMS;
(4) VIOLATIONS OF CALIF. UCL
(CA Bus. & Prof. Code §17200 *et seq.*)

DEMAND FOR JURY TRIAL

1 1. PLAINTIFFS Mack Ward and William E. Sidwell allege as follows on behalf of
2 themselves and all others similarly situated:

3 **I. JURISDICTION**

4 2. This court has subject matter jurisdiction over PLAINTIFFS' First Claim For Relief
5 pursuant to 28 U.S.C. §1331 and 29 U.S.C. §§ 207 and 216(b).

6 3. This Court has jurisdiction over PLAINTIFF Sidwell's Second, Third, Fourth and
7 Fifth Claims For Relief pursuant to 28 U.S.C. § 1367(a).

8 **II. VENUE AND INTRADISTRICT ASSIGNMENT**

9 4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), because a substantial
10 part of the events or omissions giving rise to the claim occurred here. Plaintiff Sidwell worked for
11 DEFENDANT in facilities and operations within this district, specifically, the Chevron Refinery in
12 Richmond, California. Accordingly, a substantial part of the events or omissions which give rise to
13 the claim occurred in Contra Costa County, and within the Division and Courthouse to which this
14 action has been assigned.

15 **III. INTRODUCTION**

16 5. This is an action for relief from the failure of DEFENDANT Fluor Enterprises, Inc.,
17 a subsidiary of Fluor Corporation, to pay PLAINTIFFS and other Project Controls Employees
18 proper overtime wages for its work in violation of federal and California state law. Specifically,
19 during the time period discussed herein, DEFENDANT paid PLAINTIFFS and other Project
20 Controls Employees at their regular hourly rate for time worked over 40 hours in each week rather
21 than time and one-half their hourly rate. DEFENDANT'S violation of the overtime laws was
22 knowing and willful.

23 6. PLAINTIFFS bring claims for payment of overtime, liquidated damages, interest,
24 and attorneys' fees and costs under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*
25 ("FLSA"), on behalf of similarly situated individuals who have worked as Project Controls
26 Employees for DEFENDANT nationwide (collectively hereinafter "FLSA Collective Action
27 Members"). The collective action claims are brought on behalf of PLAINTIFFS and all FLSA
28

1 Collective Action Members during the period commencing three years prior to the filing of their
2 respective Consents (the "Collective Action Period").

3 7. PLAINTIFF Sidwell also brings claims under California law for overtime
4 compensation, injunctive relief, restitution, disgorgement, statutory penalties, interest, and
5 attorneys' fees and costs. These California claims are brought on behalf of a Federal Rule of Civil
6 Procedure 23 Class of Project Controls Employees who worked for DEFENDANT in California
7 ("California Class Members") during the period commencing four years prior to the filing of this
8 action (the "Class Period").

9 8. The California Class Members and FLSA Collective Action Members shall
10 hereinafter be collectively referred to as "Class and Collective Action Members."

11 IV. PARTIES

12 A. **Plaintiffs**

13 9. PLAINTIFF William E. Sidwell is a resident of Arizona. He worked for
14 DEFENDANT Fluor Enterprises, Inc., as a Project Controls Employee at facilities in Richmond,
15 California (during the "Class Period"); Detroit, Michigan; and Safford, Arizona.

16 10. PLAINTIFF Mack Ward is a resident of Bakersfield, California. He also worked
17 for DEFENDANT Fluor Enterprises, Inc., during the Collective Action Period.

18 B. **Defendant**

19 11. DEFENDANT Fluor Enterprises, Inc., is incorporated under the laws of California
20 and has its corporate headquarters in Aliso Viejo, California. It is a subsidiary of Fluor
21 Corporation, one of the world's largest publicly owned engineering, procurement, construction,
22 maintenance, and project management companies. DEFENDANT Fluor Enterprises, Inc., is, and
23 at all relevant times has been, an employer covered by the Fair Labor Standards Act, Cal. Labor
24 Code, and IWC wage order No. 9.

25 V. STATEMENT OF FACTS

26 12. Class and Collective Action Members consist of numerous Project Controls
27 Employees employed by DEFENDANT working at facilities around the country.
28

1 13. PLAINTIFFS and Class and Collective Action Members were not salaried
2 employees.

3 14. PLAINTIFFS were paid on an hourly basis by DEFENDANT during the Collective
4 Action Period and the Class Period.

5 15. PLAINTIFFS and Class and Collective Action Members were not paid time and
6 one-half their hourly rate for hours worked over 8 hours in a day or over 40 hours in a workweek.

7 16. Instead, PLAINTIFFS and Class and Collective Action Members received their
8 regular hourly rate for all hours worked.

9 17. PLAINTIFFS and Class and Collective Action Members were not overtime-exempt
10 employees under either federal or California law.

11 18. While PLAINTIFFS and Class and Collective Action Members used computers and
12 various software programs to perform their job duties, they did not perform the work of computer
13 systems analysts, computer programmers, or software engineers.

14 19. PLAINTIFFS and Class and Collective Action Members did not apply systems
15 analysis techniques and procedures to determine hardware, software, or system functional
16 specifications.

17 20. PLAINTIFFS and Class and Collective Action Members did not design, develop,
18 document, analyze, create, test or modify computer systems or programs based on and related to
19 user or system design specifications.

20 21. PLAINTIFFS and Class and Collective Action Members did not design, document,
21 test, create or modify computer programs related to machine operating systems.

22 22. Instead, PLAINTIFFS and Class and Collective Action Members' work consisted of
23 gathering information from DEFENDANT'S clients regarding specific work projects and inputting
24 that information into computer programs that would make schedules and reports concerning the
25 performance of that work.

26 23. The work performed by PLAINTIFFS and Class and Collective Action Members
27 did not require that they know how to program or write code to create or modify software.
28

1 24. PLAINTIFFS and Class and Collective Action Members were end-users of
2 software, not computer programmers or software developers.

3 25. DEFENDANT was aware of the requirement to pay time and one-half overtime
4 compensation to employees who are paid by the hour as opposed to salaried.

5 26. DEFENDANT agreed to pay approximately \$1,000,000 dollars to settle claims
6 brought by the United States Department of Labor on behalf of employees who inspected housing
7 trailers during the Hurricane Katrina clean up and were, like the Project Controls Employees here,
8 paid straight time rates for overtime work hours.

9 **VI. COLLECTIVE ACTION ALLEGATIONS**

10 27. PLAINTIFFS bring their First Claim For Relief for violations of the FLSA as a
11 collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b) on behalf of the FLSA
12 Collective Action Members, who include all persons nationwide who have worked for
13 DEFENDANT as Project Controls Employees within the applicable statutory time period.

14 28. PLAINTIFFS and the FLSA Collective Action Members are similarly situated,
15 perform substantially similar duties for DEFENDANT, and are subject to DEFENDANT'S
16 common practice of unlawfully paying straight time rates for overtime work hours.

17 29. The First Claim For Relief for violations of the FLSA may be brought and
18 maintained as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §
19 216(b), because PLAINTIFFS' claims are similar to the claims of the FLSA Collective Action
20 Members.

21 30. The names and addresses of the FLSA Collective Action Members are available
22 from DEFENDANT. Accordingly, PLAINTIFFS pray herein for an order requiring
23 DEFENDANT to provide the names and all available contact information for all FLSA Collective
24 Action Members, so notice can be provided to them of the pendency of this action, and their right
25 to opt-in to this action.

26 **VII. RULE 23 CLASS ACTION ALLEGATIONS**

27 31. PLAINTIFF Sidwell brings all claims alleged herein under California law as a
28 statewide class action on behalf of all persons who worked for DEFENDANT in California as

1 Project Controls Employees during the time period covered herein. PLAINTIFF Sidwell seeks to
2 certify a class pursuant to the Federal Rules of Civil Procedure, Rule 23 comprised of:

3 All persons who are or have worked as Project Controls Employees for
4 DEFENDANT in the State of California who were paid straight time rates for
5 overtime work hours (referred to as "California Class Members") in any week
6 during the period commencing four years from the filing of this action through the
7 entry of final judgment in this action.

8 32. The class claims herein have been brought and may properly be maintained as a
9 class action under Rule 23 of the Federal Rules of Civil Procedure because (1) the class is so
10 numerous that joinder of all class members is impracticable; (2) there are questions of law and or
11 fact common to the class; (3) the claims of the proposed class representatives are typical of the
12 claims of the class; and (4) the proposed class representative and his counsel will fairly and
13 adequately protect the interests of the class. In addition, the questions of law or fact that are
14 common to the class predominate over any questions affecting only individual class members and a
15 class action is superior to other available means for fairly and efficiently adjudicating the
16 controversy.

17 a. Ascertainability and Numerosity: The potential California Class Members
18 as defined herein are so numerous that joinder would be impracticable. PLAINTIFF Sidwell is
19 informed and believes, and based on such information and belief, allege that DEFENDANT has
20 employed hundreds of Project Controls Employees in during the Class Period. The names and
21 addresses of the California Class Members are available to the DEFENDANT. Notice can be
22 provided to the California Class Members via first class mail using techniques and a form of notice
23 similar to those customarily used in class action lawsuits of this nature.

24 b. Commonality and Predominance of Common Questions: There are
25 questions of law and fact common to PLAINTIFF Sidwell and the California Class Members that
26 predominate over any questions affecting only individual members of the Class. These common
27 questions of law and fact include, without limitation:

28 i. Whether DEFENDANT has failed to pay California Class Members

1 overtime wages for time worked in excess of 40 hours per week and/or eight hours per day;

2 ii. Whether DEFENDANT has employed California Class Members in
3 a position subject to, and not exempt from, California's overtime pay requirements;

4 iii. Whether DEFENDANT has violated IWC wage order No. 9, § 3 and
5 Cal. Labor Code §§ 510 and 1194 by its failure to pay California Class Members overtime
6 compensation;

7 iv. Whether DEFENDANT's failure to pay overtime compensation to
8 California Class Members constitutes an unlawful, unfair, and/or fraudulent business practice
9 under Cal. Business & Professions Code § 17200 *et seq.*;

10 v. Whether DEFENDANT has violated Labor Code §§ 201-203 by
11 failing, upon termination, to timely pay California Class Members wages that were due for
12 overtime wages;

13 vi. Whether DEFENDANT'S failure to pay all compensation owed to
14 California Class Members at time of termination of employment constituted an unlawful, unfair,
15 and/or fraudulent business practice under Cal. Business & Professions Code § 17200 *et seq.*; and

16 vii. The proper formula for calculating disgorgement, restitution,
17 damages, and other statutory penalties owed to PLAINTIFF Sidwell and the California Class
18 Members alleged herein.

19 c. Typicality: PLAINTIFF Sidwell's claims are typical of the claims of the
20 other California Class Members. DEFENDANT'S common course of unlawful conduct has
21 caused PLAINTIFF Sidwell and similarly situated California Class Members to sustain the same or
22 similar injuries and damages caused by the same practices of DEFENDANT. PLAINTIFF
23 Sidwell's claims are thereby representative of and co-extensive with the claims of the other
24 California Class Members.

25 d. Adequacy of Representation: PLAINTIFF Sidwell is a member of the Rule
26 23 Class defined herein, does not have any conflicts of interest with other California Class
27 Members, and will prosecute the case vigorously on behalf of the Class. PLAINTIFF Sidwell will
28 fairly and adequately represent and protect the interests of the California Class Members.

1 PLAINTIFF Sidwell's counsel are competent and experienced in litigating large employment class
2 actions, including large wage and hour class actions.

3 **VIII. DAMAGES**

4 33. As a direct, foreseeable, and proximate result of DEFENDANT'S conduct,
5 PLAINTIFFS and similarly situated Class and Collective Action Members are owed overtime
6 compensation plus interest and/or liquidated damages, disgorgement, restitution, other statutory
7 penalties, and punitive damages, the precise amount of which will be proven at trial.

8 **IX. CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **FLSA CLAIMS, 29 U.S.C. § 201, *ET SEQ.***

11 **(ON BEHALF OF PLAINTIFFS AND**

12 **FLSA COLLECTIVE ACTION MEMBERS)**

13 34. The allegations of each of the preceding paragraphs are re-alleged and incorporated
14 herein by reference, and PLAINTIFFS allege as follows a claim of relief on behalf of themselves
15 and all FLSA Collective Action Members.

16 35. At all relevant times, DEFENDANT has been, and continue to be, an "employer"
17 engaged in interstate "commerce" and/or in the production of "goods" for "commerce," within the
18 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, DEFENDANT has employed, and
19 continue to employ, "employee[s]" including PLAINTIFFS and each of the FLSA Collective
20 Action Members. At all relevant times, DEFENDANT has had gross operating revenues in excess
21 of \$500,000.

22 36. PLAINTIFFS consent to sue in this action pursuant to Section 16(b) of the FLSA,
23 29 U.S.C. § 216(b). Copies of PLAINTIFFS' consents to sue are attached hereto as Exhibits A and
24 B.

25 37. The FLSA requires each covered employer, such as DEFENDANT, to compensate
26 all non-exempt employees at the rate of not less than one and one-half times the regular rate of pay
27 for work performed in excess of forty (40) hours in a week.

1 38. The FLSA Collective Action Members are entitled to overtime compensation for all
2 overtime hours worked.

3 39. At all relevant times, DEFENDANT had a policy and practice of paying straight
4 time rates for overtime work hours to the FLSA Collective Action Members for their hours worked
5 in excess of forty (40) hours per week.

6 40. By failing to compensate PLAINTIFFS and the FLSA Collective Action Members
7 at a rate of not less than one and one-half times the regular rate of pay for work performed in
8 excess of forty (40) hours in a workweek, DEFENDANT violated, and continues to violate, the
9 FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and § 215(a).

10 41. PLAINTIFFS, on behalf of themselves and the FLSA Collective Action Members,
11 seek damages in the amount of unpaid overtime compensation, interest, and liquidated damages, as
12 provided by the FLSA, 29 U.S.C. §§ 216(b) and 255, and such other legal and equitable relief as
13 the Court deems just and proper.

14 42. PLAINTIFFS, on behalf of themselves and FLSA Collective Action Members, seek
15 recovery of attorneys' fees and costs of action to be paid by DEFENDANT, as provided by the
16 FLSA, 29 U.S.C. § 216(b).

17 **SECOND CLAIM FOR RELIEF**

18 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**

19 **(CAL. LABOR CODE §§ 510, 1194, *ET SEQ.*, IWC WAGE ORDER NO. 9.)**

20 **(ON BEHALF OF PLAINTIFF SIDWELL AND ALL CALIFORNIA CLASS MEMBERS)**

21 43. The allegations of each of the preceding paragraphs are re-alleged and incorporated
22 herein by reference, and PLAINTIFF Sidwell alleges as follows a claim of relief on behalf of
23 himself and the above-described Rule 23 Class of similarly situated California Class Members
24 employed by DEFENDANT in California.

25 44. By failing to pay overtime compensation to PLAINTIFF Sidwell and similarly
26 situated California Class Members as alleged above, DEFENDANT has violated and continue to
27 violate Cal. Labor Code § 510 and IWC wage order No. 9, § 3, which require the payment of
28 overtime compensation for non-exempt employees.

45. As a result of DEFENDANT'S unlawful acts, PLAINTIFF Sidwell and similarly situated California Class Members have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor Code § 1194.

46. By violating Cal. Labor Code § 510, DEFENDANT is liable for civil penalties and attorneys' fees and costs under Cal. Labor Code §§ 558, 1194 and 1197.1.

47. DEFENDANT'S actions were willful, malicious, fraudulent and oppressive, and were committed with the wrongful intent to injure PLAINTIFF Sidwell and California Class Members and in conscious disregard of their rights.

48. PLAINTIFF Sidwell, on behalf of himself and similarly situated California Class Members, requests relief as described below.

THIRD CLAIM FOR RELIEF

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(CAL. LABOR CODE § 226)

(ON BEHALF OF PLAINTIFF SIDWELL AND ALL CALIFORNIA CLASS MEMBERS)

49. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and PLAINTIFF Sidwell alleges as follows a claim of relief on behalf of himself and the above-described Rule 23 Class of similarly situated California Class Members employed by DEFENDANT in California.

50. Pursuant to California Labor Code section 226(a), employers must at the time of each payment of wages provide each employee with a wage statement itemizing, among other things: (1) gross wage earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the employee's name and social security number; (8) the employer's name and address of the legal entity that qualifies as the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 51. California Labor Code section 226(e) provides that an employee suffering injury as
 2 a result of a knowing and intentional failure by an employer to comply with Section 226(a) may
 3 recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in
 4 which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up
 5 to a maximum of \$4,000), in addition to reasonable attorneys' fees and costs.

6 52. DEFENDANT knowingly and intentionally failed to provide timely, accurate,
 7 itemized wage statements to PLAINTIFF Sidwell and the California Class Members in accordance
 8 with California Labor Code section 226, as alleged above, by failing to indicate that overtime hours
 9 were worked and failing to pay premium pay for such overtime hours. Accordingly, PLAINTIFF
 10 Sidwell and the California Class Members may recover the damages and penalties provided for
 11 under California Labor Code section 226(e), plus interest thereon, reasonable attorneys' fees, and
 12 costs.

13 53. PLAINTIFF Sidwell, on behalf of himself and similarly situated California Class
 14 Members, requests relief as described below.

15 **FOURTH CLAIM FOR RELIEF**

16 **FAILING TO PAY ALL WAGES DUE AT TERMINATION**

17 **(CAL. LABOR CODE §§ 201, 202, 203)**

18 **(ON BEHALF OF PLAINTIFF SIDWELL AND ALL CALIFORNIA CLASS MEMBERS)**

19 54. The allegations of each of the preceding paragraphs are re-alleged and incorporated
 20 herein by reference, and PLAINTIFF Sidwell alleges as follows a claim of relief on behalf of
 21 himself and the above-described Rule 23 Class of similarly situated California Class Members
 22 employed by DEFENDANT in California.

23 55. Labor Code § 201 provides that an employer is required to provide an employee
 24 who is terminated all accrued wages and compensation at the time of termination. Labor Code §
 25 202 provides that an employer is required to provide an employee who resigns all unpaid wages
 26 within 72 hours of their resignation. For every day that final wages or any part of the final wages
 27 remain unpaid in violation of Labor Code §§ 201 and 202, the employer is liable for a penalty
 28 equivalent to the employee's daily wage, for a maximum of 30 days. See Labor Code §203.

1 56. During the relevant time period, PLAINTIFF Sidwell and the California Class
 2 Members who are former employees ended their employment relationship with DEFENDANT
 3 through either involuntary termination or resignation. DEFENDANT, however, willfully failed
 4 and refused to pay these persons accrued wages and other compensation (including unpaid
 5 overtime wages) due immediately upon termination or within 72 hours of their resignation as
 6 required under California Labor Code sections 201 and 202, respectively.

7 57. As a result of their failure to timely pay all wages owed at the time of termination
 8 or, as applicable, within 72 hours of resignation, DEFENDANT owes PLAINTIFF Sidwell and
 9 California Class Members who are former employees waiting time penalties under California
 10 Labor Code section 203.

11 58. PLAINTIFF Sidwell, on behalf of himself and similarly situated California Class
 12 Members, requests relief as described below.

13 **FIFTH CLAIM FOR RELIEF**

14 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**

15 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-09)**

16 **(ON BEHALF OF PLAINTIFF SIDWELL AND ALL CALIFORNIA CLASS MEMBERS)**

17 59. The allegations of each of the preceding paragraphs are re-alleged and incorporated
 18 herein by reference, and PLAINTIFF Sidwell allege as follows a claim of relief on behalf of
 19 himself and the above-described Rule 23 Class of similarly situated California Class Members and
 20 in a representative capacity under Cal. Business and Professions Code § 17204.

21 60. Cal. Business & Professions Code § 17200, *et seq.* prohibits unfair competition in
 22 the form of any unlawful, unfair, or fraudulent business act or practice.

23 61. Cal. Business & Professions Code § 17204 allows “any person acting for the
 24 interests of itself, its members or the general public” to prosecute a civil action for violation of the
 25 UCL.

26 62. Beginning at an exact date unknown to PLAINTIFF Sidwell, but at least four years
 27 prior to the filing of this action, DEFENDANT has committed unlawful, unfair, and/or fraudulent
 28

1 business acts and practices as defined by Cal. Business & Professions Code § 17200, *et seq.*, by
2 engaging in the following:

3 a. failing to pay overtime compensation to PLAINTIFF Sidwell and similarly
4 situated California Class Members;

5 b. failing to pay all accrued overtime compensation to PLAINTIFF Sidwell
6 California Class Members upon termination of their employment;

7 c. failing to provide accurate, itemized wage statements as required under
8 California law; and,

9 d. failing to pay all wages due at the time of termination of terminated
10 California Class Members, including PLAINTIFF Sidwell.

11 63. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate
12 acts and practices for purposes of Cal. Business and Professions Code § 17200, *et seq.*

13 64. As a direct and proximate result of DEFENDANT'S unlawful, unfair, and/or
14 fraudulent acts and practices described herein, DEFENDANT has received and continue to hold ill-
15 gotten gains belonging to PLAINTIFF Sidwell and California Class Members. As a direct and
16 proximate result of DEFENDANT'S unlawful business practices, PLAINTIFF Sidwell and
17 California Class Members have suffered economic injuries including, but not limited to, loss of
18 overtime wages. DEFENDANT has profited from its unlawful, unfair, and/or fraudulent acts and
19 practices in the amount of those unpaid overtime wages, and interest.

20 65. PLAINTIFF Sidwell and similarly situated California Class Members are entitled to
21 restitution pursuant to Cal. Business & Professions Code §§ 17203 and 17208 for all unpaid
22 overtime, and interest since four years prior to the filing of this action.

23 66. PLAINTIFF Sidwell and similarly situated California Class Members are entitled to
24 enforce all applicable penalty provisions of the Cal. Labor Code pursuant to Cal. Business &
25 Professions Code § 17202.

26 67. PLAINTIFF Sidwell's success in this action will enforce important rights affecting
27 the public interest. In this regard, PLAINTIFF Sidwell sues on behalf of the public as well as on
28 behalf of himself and others similarly situated. PLAINTIFF Sidwell seeks, and is entitled to,

1 unpaid overtime compensation, declaratory and injunctive relief, civil penalties, and any other
2 appropriate remedy.

3 68. Injunctive relief is necessary and appropriate to prevent DEFENDANT from
4 continuing and repeating the unlawful, unfair and fraudulent business acts and practices alleged
5 above.

6 69. In order to prevent DEFENDANT from profiting and benefiting from its wrongful
7 and illegal acts and continuing those acts, it is appropriate for the Court to issue an order requiring
8 DEFENDANT to disgorge all the profits and gains it has reaped and restore such profits and gains
9 to PLAINTIFF Sidwell and the California Class Members, from whom they were unlawfully taken.

10 70. PLAINTIFF Sidwell has assumed the responsibility of enforcement of the laws and
11 lawful claims specified herein. There is a financial burden incurred in pursuing this action, which
12 is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal.
13 Code of Civil Procedure § 1021.5.

14 71. By all of the foregoing alleged conduct, DEFENDANT has committed, and is
15 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
16 meaning of Cal. Business & Professions Code §17200, *et seq.*

17 72. As a direct and proximate result of the unfair business practices described above,
18 PLAINTIFF Sidwell, other California Class Members, and members of the general public have all
19 suffered significant losses and DEFENDANT has been unjustly enriched.

20 73. Pursuant to Cal. Business & Prof. Code §17203, PLAINTIFF Sidwell, other
21 California Class Members, and member of the general public are entitled to: (a) restitution of
22 money acquired by DEFENDANT by means of its unfair business practices, in amounts not yet
23 ascertained but to be ascertained at trial; (b) injunctive relief against DEFENDANT'S continuation
24 of its unfair business practices; and (c) a declaration that DEFENDANT'S business practices are
25 unfair within the meaning of the statute.

26 74. PLAINTIFF Sidwell, on behalf of himself and similarly situated California Class
27 Members, requests relief as described below.

X. REQUEST FOR JURY TRIAL

75. PLAINTIFFS request a trial by jury on behalf of themselves and the above described similarly situated Class and Collective Action Members.

XI. PRAYER FOR RELIEF

76. WHEREFORE, PLAINTIFFS, on behalf of themselves and all members of the FLSA Collective Action Members, prays for relief as follows:

A. Designation of this action as a collective action on behalf of the FLSA Collective Action Members (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated FLSA Collective Action Members, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent forms pursuant to 29 U.S.C. § 216(b);

B. Designation of PLAINTIFFS as Representatives of the FLSA Collective Action;

C. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

E. An award of damages, according to proof, including liquidated damages, to be paid by DEFENDANT;

F. Costs of action incurred herein, including expert fees;

G. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

H. Pre-Judgment and Post-Judgment interest, as provided by law; and

I. Such other relief as this Court deems necessary, just, and proper.

77. WHEREFORE, PLAINTIFF Sidwell on behalf of himself and the above-described Rule 23 Class of similarly situated California Class Members, requests relief as follows:

A. Certification of the above-described Rule 23 Class as a class action, pursuant to Federal Rule of Civil Procedure, Rule 23;

C. Provision of class notice to all California Class Members;

D. A declaratory judgment that DEFENDANT has knowingly and intentionally violated the following provisions of law:

1. Cal. Labor Code §§ 510, 1194 *et seq.* and IWC wage order No. 9 by failure

1 to pay overtime compensation to California Class Members;

2 2. Cal. Labor Code §§ 201-203, for willful failure to pay overtime
3 compensation at the time of termination of employment; and

4 3. Cal. Business and Professions Code §§ 17200-17208, by failing to pay
5 overtime compensation to California Class Members under California law and the FLSA and by
6 willfully failing to pay all compensation owed to California Class Members upon termination of
7 employment;

8 E. A declaratory judgment that DEFENDANT'S violations as described above were
9 willful;

10 F. An equitable accounting to identify, locate, and restore to all current and former
11 California Class Members the wages that are due;

12 G. An award to PLAINTIFF Sidwell and the California Class Members of damages in
13 the amount of unpaid overtime compensation, including interest thereon, subject to proof at trial;

14 J. An award of penalties owed, pursuant to Labor Code § 203, to all California Class
15 Members who left DEFENDANT'S employ without receiving all compensation (including
16 overtime wages) owed at the time.

17 K. An award of penalties owed, pursuant to Labor Code § 226 for failure to provide
18 accurate, itemized wage statements.

19 L. An order requiring DEFENDANT to pay all California Class Members required
20 overtime compensation.

21 M. An order requiring DEFENDANT to pay restitution of all amounts owed to
22 PLAINTIFF Sidwell and similarly situated California Class Members for DEFENDANT'S failure
23 to pay legally required overtime pay (under state and federal law), and interest thereon, in an
24 amount according to proof, pursuant to Business & Professions Code § 17203.

25 N. An award to PLAINTIFF Sidwell and the California Class Members of reasonable
26 attorneys' fees and costs, pursuant to Cal. Code of Civil Procedure § 1021.5 and Cal. Labor Code
27 §§ 216, 1194, and 2802 and/or other applicable law.

28 O. An award to PLAINTIFF Sidwell and the California Class Members of such other

1 and further relief as this Court deems just and proper.

2 DATED: September 27, 2010.

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4
5 By 
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CONSENT TO JOIN COLLECTIVE ACTION

I Mack Ward hereby consent to join the lawsuit, William Sidwell
and Mack Ward v. Fluor Enterprises, Inc.

N.D. Calif., Case No. _____, as a party plaintiff, to assert claims against these
defendants (and any other entities that may be added as Defendants) for violations of the
Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

Executed in Bakersfield Ca, on 9/23/10
City, State Date

Mack Ward
Signature

MACK Ward
Name Printed

REDACTED


CONSENT TO JOIN COLLECTIVE ACTION

I _____ hereby consent to join the lawsuit, William Sidwell
and Mack Ward v. Fluor Enterprises, Inc.

N.D. Calif., Case No. _____, as a party plaintiff, to assert claims against these
defendants (and any other entities that may be added as Defendants) for violations of the
Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

Executed in _____, on _____
City, State Date


Signature


Name Printed

REDACTED